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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

|                                |   |                      |
|--------------------------------|---|----------------------|
| In the Matter of               | ) |                      |
|                                | ) | CC Docket No. 95-155 |
| Toll Free Service Access Codes | ) | NSD File No. L-98-85 |

## REPLY

BellSouth Corporation,<sup>1</sup> by counsel, on behalf of itself and its affiliated companies, files this reply to the comments filed in response to the Public Notice issued by the Common Carrier Bureau on June 11, 1998.<sup>2</sup> BellSouth agrees with the comments of Bell Communications Research, Inc. (Bellcore) and that portion of the comments of Sprint Communications Company, L.P. (Sprint) which support the March 25, 1998 North American Numbering Council (NANC) opinion to the Federal Communications Commission that Database Service Management, Inc. (DSMI) is an "impartial and neutral" and should continue in its current capacity.<sup>3</sup> BellSouth opposes the comments of MCI Telecommunications Corporation (MCI) as well as that portion of Sprint's comments which attack the SMS/800 Management Team (SMT).<sup>4</sup>

<sup>1</sup> BellSouth Corporation is a publicly traded Georgia corporation that holds the stock of BellSouth Telecommunications, Inc. (BST), which, along with other Bell operating companies, was ordered by the Federal Communications Commission to file the 800 Service Management System tariff. *Provision of Access for 800 Service*, 8 FCC Rcd. 1423 (1993) ("Comptel Declaratory Ruling").

<sup>2</sup> *Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation that Database Service Management, Inc. Remain the Toll Free Database Administrator*, CC Docket No. 95-155, NSD File No. L-98-85, Public Notice, DA-98-1112 (June 11, 1998).

<sup>3</sup> Bellcore, *passim*; Sprint at 1; see Letter from Alan C. Hasselwander, Chairman, North American Numbering Council to A. Richard Metzger, Jr., Chief, Common Carrier Bureau (March 25, 1998) (*NANC Letter*). BellSouth is not a member of the NANC.

<sup>4</sup> MCI, *passim*; Sprint, *passim*. BST is a member of the SMT.

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## **I. NEITHER DSMI NOR THE SMT ADMINISTER NUMBERS**

It is inappropriate for the Commission to continue to analyze DSMI's current function in terms of "number administration." Neither DSMI nor SMT have any control over nor play any role in the actual allocation of toll free numbers. Customers who desire toll free numbers do not obtain them from DSMI or from SMT. Rather, nearly two hundred (200) Responsible Organizations (Resp Orgs), including interexchange carriers (IXCs), wireless carriers, local exchange carriers (LECs), organizations and individuals have non-discriminatory, first come, first served access to select and reserve numbers from the database maintained pursuant to the 800/SMS tariff.

The objectives motivating the Commission's neutral number administration principles have long been achieved in the toll free number marketplace. When the Commission first developed its federal policy objectives for North American Numbering Plan (NANP) administration, it did so in the context of addressing the ready and timely availability of numbering resources.<sup>5</sup> The Commission was concerned that where incumbent LECs both assigned central office codes and developed area code relief plans, the opportunities for "warehousing" central office codes and developing relief plans, such as technology specific overlays, could potentially discourage new providers in the telecommunications marketplace and prevent or discourage consumers from taking new services.<sup>6</sup>

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<sup>5</sup> *Proposed 708 Relief Plan and 630 Number Plan Area Code by Ameritech, Illinois*, 10 FCC Rcd 4596, 4604 (1995).

<sup>6</sup> *Id.* at 4604; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19519 (1996) (*Second Interconnection Order*). Although there were no complaints about Bellcore's performance as NANP Administrator (NANPA) when it was a subsidiary of the several BOCs, and no complaints about BST's role as central office code administrator in portions of nine southern states, BellSouth has long supported the transfer of area code and central office code administration to a neutral third party.

Prior to passage of the 1996 Act, the Commission had determined that the functions associated with central office code administration should be centralized and transferred from twelve incumbent LECs to a new NANP administrator.<sup>7</sup> This was done in order to (1) ensure equal, non-discriminatory access to central office codes; (2) increase efficiency in central office code assignment by eliminating the possibility of differing interpretations of industry developed central office code assignment guidelines by different administrators; and, (3) allow the Commission and NANP member country regulators to keep abreast of number exhaust sooner.<sup>8</sup> None of these concerns apply with respect to toll-free numbers.

Unlike the allocation or assignment of new area codes or central office codes, prior to the 1996 Act the Commission concluded that access to the database of toll free numbers is a Title II common carrier service that must be provided under tariff.<sup>9</sup> The Commission required the Bell operating companies to file a single joint tariff for access to toll free number functions. The Joint tariff contains the prices, terms and conditions of access as well as eligibility requirements for Resp Orgs. The tariff requirement therefore ensured, even prior to the 1996 Act's passage, that toll free numbers would be administered in a uniform, impartial way. The Commission has been kept abreast of toll free number exhaustions. Thus the equal access, uniform interpretation, and regulatory oversight objectives that were the motives for transferring central office code administration and area code relief planning functions from incumbent LECs to a centralized neutral third party had already been embodied in the Commission's determination that toll free

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<sup>7</sup> Administration of the North American Numbering Plan, 11 FCC Rcd 2588, 2619 (1995) (NANP Order).

<sup>8</sup> *Id.* 2619-2620.

<sup>9</sup> *Comptel Declaratory Ruling*, supra n.1. Area code relief planning and central office code administration were, until recently, performed by several incumbent local exchange carriers pursuant to consensus administration guidelines developed by the telecommunications industry.

number access would be a common carrier service provided under tariffed terms and conditions by the BOCs subject to Commission review and oversight.

MCI purports to identify four broad functions that are a part of number administration.<sup>10</sup> Neither DSMI nor SMT perform any of these functions. Policy making with respect to toll free numbers is handled by the Commission itself, and much important work is done within industry fora, primarily the SMS/800 Number Administration Committee (SNAC), an industry-wide group that is responsible for maintaining the primary toll free number administration document, *Industry Guidelines for Toll Free Number Administration*, and the Industry Numbering Committee (INC). The Commission also handles dispute resolution. While SMT subcontracts for the provision of operational hardware maintenance and software support, the actual maintenance of the electronic information content of the SMS/800 database is handled through the Resp Orgs' direct access to the database. Finally, neither DSMI nor SMT process any applications for toll free numbers. Resp Orgs submit electronic requests for numbers, and the system provided under non-discriminatory tariff searches the appropriate databases and processes the request.

Thus, long prior to the 1996 Act's passage, Resp Orgs have been able to obtain nondiscriminatory, direct electronic access to a national database of toll free numbers, from which *they* are free to select and reserve toll free numbers *without the intervention* of DSMI or SMT or any other entity for that matter.<sup>11</sup> Indeed, in its *Second Interconnection Order* the Commission correctly determined that the action it had taken in its NANP Order satisfies the Section 251(e)(1) requirement that the Commission create or designate an impartial numbering

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<sup>10</sup> MCI at 14.

<sup>11</sup> To the extent there have been complaints about the toll free number allocation process, they have arisen out of the alleged hoarding and warehousing of toll free numbering resources by Resp Orgs, and not out of the SMT's tariff administration functions.

administrator.<sup>12</sup> The Commission also rejected arguments that the *NANP Order* did not satisfy Section 251(e)(1) because it did not address toll free number administration.<sup>13</sup>

Notwithstanding its earlier determination in the *Second Interconnection Order* that its obligations under Section 251(e)(1) had been fully and completely satisfied by the 1995 NANP Order, the Commission erroneously determined that toll free number database administration is inconsistent with Section 251(e)(1).<sup>14</sup> The Commission did not expressly conclude that DSMI engages in number administration, nor did it state any reasons for its determination or otherwise explicitly conclude that the public interest would be served by the appointment of a new administrator. The Commission instead directed the NANC to recommend an entity to assume the duties of toll free number administration, and the NANC has recommended that DSMI “be continued as the administrator” because DSMI “is an impartial and neutral administrator.”<sup>15</sup>

The NANC’s response to the Commission reflects a pragmatic, industry recognition of reality: ever since the Commission determined that access to the SMS 800 database was a Title II common carrier service and compelled the BOCs to provide non-discriminatory access to the database under tariffed prices, terms and conditions subject to review by the Commission, the regime has worked. DMSI has done a creditable job. and, with its sale to SAIC, is qualified to be an impartial and neutral administrator under the Commission’s guidelines. It makes no sense

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<sup>12</sup> *Second Interconnection Order* at 19510.

<sup>13</sup> The Commission noted, in this context, that it had directed the NANC to provide recommendations on “What number resources, beyond those currently administered by the NANP Administrator should the NANP Administrator administer?” *Id.*

<sup>14</sup> *Toll Free Access Codes*, CC Docket No. 95-155, *Third Report and Order*, (released October 9, 1997) at ¶ 209. In its earlier Further Notice of Proposed Rulemaking, the only reason the Commission gave for its conclusion that DSMI’s involvement with toll free numbers violated Section 251(e)(1) was DSMI’s then “current ties to the RBOCs.” *Toll Free Service Access Codes*, CC Docket 95-155, *Second Report and Order and Further Notice of Proposed Rulemaking* (released April 11, 1997) at ¶ 101. This concern is, of course, moot because DSMI no longer has these ties with the RBOCs.

to disrupt industry resources and to require another costly and time consuming NANPA competitively process when neither DSMI nor SMT engage in number administration; when the NANC has determined that, in any event, DSMI is "impartial and neutral" and should continue as the administrator; when the Commission has already ordered that the terms and conditions of toll free number access be provided as a common carrier service pursuant to a tariff that is subject to Commission review; and when the present system has proven successful in the market place.

**II. THE COMMISSION SHOULD NOT EXPAND SMT MEMBERSHIP BEYOND THE BOCs REQUIRED TO FILE AND MAINTAIN THE SMS/800 TARIFF.**

MCI and Sprint engage in an unsubstantiated attack on the work of the SMT, which operates the SMS 800 tariff as a common carrier service under legal compulsion by the Commission. As long as BOCs alone are compelled by the Commission to provide an SMS/800 service pursuant to a Commission ordered tariff, it should be the BOCs, and no other carriers, that file the tariff and provide the service. Moreover, both Sprint and MCI fail to give fair mention to the role and importance of the SNAC, an open industry forum. The SMT works closely with the SNAC to implement user-requested system modifications. It is in fact the SNAC co-chairs, one of which is a Sprint employee, that fill the role of liaison to the FCC. Recent SMT contacts with the Commission were initiated by the SNAC, which requested that the SMT take several questions formulated by the SNAC directly to the Commission. In addition, SMT meets with the FCC to address requirements and impacts on the SMS/800 operations as a consequence of the *Comptel Declaratory Ruling*. MCI and Sprint's attempts to portray the SMT's contacts with the Commission as somehow inappropriate are disingenuous.

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<sup>15</sup> *NANC Letter*, supra n.3.

The SMT has recently authorized the most extensive list of enhancements ever for the SMS/800 system and these were based entirely on input from the SNAC. Among these was the development of the Graphical User Interface (GUI) about which Sprint complains bitterly. Many smaller users within the SNAC had requested a GUI to ease their system access requirements and user training commitments. Sprint, a large user and member of the SNAC, uses a different type of interface internally. The SMT resolved the conflict in favor of the many smaller users. Nonetheless, Sprint and MCI fail to mention that the SMT also developed an interface for users of the type of mechanized generic interface (MGI) used by Sprint, and even expedited its development based on requests from MGI users, in order to accommodate both GUI and MGI users. Both Sprint and MCI will benefit from this new interface upgrade.

Sprint and MCI attack the prices, costs and other terms of the SMS/800 tariff. The rate structure filed by the SMT, including cost allocation methodologies, is subject to review by the Commission. The Commission has investigated fully the SMS tariff rates and found them reasonable.<sup>16</sup> Contrary to MCI's shading of the facts, it was the SMT that initiated contact with the FCC to request forbearance from the Communications Act's prohibition on rebates in Section 203(c)(2) in order to allow a flow-through to customers of excess revenues generated as a result of the explosive growth in the use of toll free numbering resources. SMS/800 financial records maintained by DDMI are subject to audit by the Commission, and the SMT is committed to providing the Commission with an annual audit of systems costs and revenues performed by an independent auditing firm.

Both MCI's and Sprint's complaints with respect to allegedly proprietary data are without merit; most SMS/800 records do not contain any sensitive proprietary data. Little or no such

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<sup>16</sup> *800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, 11 FCC Rcd 15227, ¶ 251 (1996).

data of the type identified by Sprint and MCI actually exist. In any event, SMT's contracts with systems subcontractors specifically limit access to and utilization of customer proprietary data, to the extent there are any. As far as operating system data, these data are in fact proprietary to the BOCs, who designed and developed the system pursuant to the Comptel Order, and neither Sprint nor MCI has demonstrated any compelling need why such data, proprietary to the BOCs, should be made available to third parties.

MCI and Sprint simply fail to tell the whole story. They fail to note that, owing to SMT management, there has never been a major outage or failure of the SMS/800. There has never been a need to resort to the SMT's disaster recovery procedures. They fail to note that under SMT management system enhancements have expanded SMS/800 capacity to accommodate the availability of 888 and 877 toll free numbers. MCI and Sprint fail to note that, concurrent with this successful expansion, the SMT has managed to reduce tariff rates for SMS/800 services by 50%. It is undoubtedly this management record, together with the non-discriminatory protections afforded by the tariff coupled with the sale of Bellcore and, consequently, DSMI to SAIC, that has prompted NANC, representing the industry, to recommend that DSMI continue in its current capacity.

The Commission having first determined that SMS/800 access is a common carrier service, and ordering the BOCs to offer this service to the industry on a non-discriminatory basis under tariff, the BOCs lawfully manage the tariff through the SMT. The SMT in turn subcontracts with vendors who have either been determined by NANC to be impartial and neutral or who have gone through a competitively neutral competitive bidding process under Commission supervision.<sup>17</sup> The Commission simply cannot compel one carrier to provide a

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<sup>17</sup> MCI, an unsuccessful bidder for the role performed by SBC today, would of course be unqualified to perform that role under the criteria advanced in its comments.



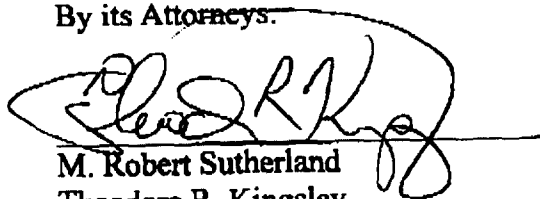
common carrier service under tariff, and then compel that carrier to allow others, even rival firms (some of whom may not be carriers), to determine how that carrier's assets and resources should be managed or deployed. To do so would constitute an unwarranted regulatory intrusion upon the management of a lawful business enterprise, and could even lead to an unconstitutional confiscation of assets and other private property.

The Commission conceivably could determine that what the BOCs now provide pursuant to the *Comptel Declaratory Ruling* as a common carrier service no longer needs to be subject to common carrier regulation in order to ensure non-discriminatory access to toll free numbers. It could forbear from Title II regulation and order a prospective detariffing of the service. In exercising its forbearance authority, however, the Commission must do so in such a manner that would provide for the orderly dissolution of the current Title II regime, appropriate compensation for current SMT members, and the creation of a whole new replacement database administration mechanism. But neither MCI nor Sprint has presented any reason to do so, and neither has demonstrated how the public interest would be served by engineering such a disruption in the current toll free number marketplace. Neither has advanced a tenable technological, economic, legal, social or regulatory case for further Commission intervention.

## CONCLUSION

The Commission should accept the NANC recommendation and reject the attempts by MCI and Sprint to interfere with the SMT's lawful management of its tariff obligations.

Respectfully submitted,  
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Date: July 13, 1998

## CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of July 1998, serviced all parties to this action with the foregoing *COMMENTS*, reference CC Docket No. 95-155, NSD File No. L-98-85, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.

  
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